



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Health

TITLE-SERIES: 64-59

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: PATIENT RIGHTS AT STATE-OPERATED
MENTAL HEALTH FACILITIES

CITE STATUTORY AUTHORITY: 27-5-9(g)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) 2427

Section (g) Passed On 4/6/2021 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 30, 2021

This rule shall terminate and have no further force or effect from the following date:

August 01, 2026

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 64
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 59
PATIENT RIGHTS AT STATE-OPERATED MENTAL HEALTH FACILITIES**

§64-59-1. General.

1.1. Scope. -- This legislative rule establishes the rights of patients of state-operated mental health facilities.

1.2. Authority. -- W. Va. Code §27-5-9(g).

1.3. Filing Date. -- April 29, 2021.

1.4. Effective Date. -- April 30, 2021.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2026.

1.6. Construction. -- This rule shall be liberally construed to effectuate the rehabilitative goals of Chapter 27 of the West Virginia Code, consistent with the protection of patient rights and dignity.

§64-59-2. Application and Enforcement.

2.1. Application. -- This rule applies to state-operated mental health facilities that are licensed to provide inpatient psychiatric services.

2.2. Enforcement. -- This rule is enforced internally by the Secretary of the Department of Health and Human Resources or his or her designee, or externally by individual action.

§64-59-3. Definitions.

3.1. Administrator. -- The chief executive officer of the mental health facility.

3.2. Chemical Restraint. -- A drug or medication that is not used as a standard treatment for the patient's medical or psychiatric condition or that is used solely as a means of coercion, discipline, convenience, or retaliation, and that results in restricting the patient's freedom of movement.

3.3. Clinical director or chief medical officer. -- The person who has the responsibility for decisions involving clinical and medical treatment of patients in a mental health facility in accordance with W. Va. Code §27-1-7.

3.4. C.F.R. -- References to the Code of Federal Regulations herein, and subsections thereto, refer to regulations in effect as follows:

3.4.1. 42 C.F.R. § 482.13, effective November 29, 2019;

3.4.2. 42 C.F.R. § 482.24, effective June 30, 2020;

3.4.3. 42 C.F.R. § 482.28, effective July 11, 2014;

3.4.4. 42 C.F.R. § 482.41, effective July 5, 2016;

3.4.5. 42 C.F.R. § 482.42, effective September 2, 2020;

3.4.6. 42 C.F.R. § 482.61, effective June 30, 2020; and

3.4.7. 42 C.F.R. § 482.62, effective October 26, 2007.

3.5. Facility. -- A mental health facility that treats patients as defined herein.

3.6. FDA Food Code. -- The Federal Food Code, also known as the 2017 Recommendations of the United States Public Health Service, Food and Drug Administration, is published by the U.S. Food and Drug Administration. The FDA Food Code is accessible at <https://www.fda.gov/food/fda-food-code/food-code-reference-system>.

3.7. Individualized Treatment Plan (IPP). -- A treatment plan to promote the discharge of a patient that is prepared and maintained in accordance with 42 C.F.R. § 482.61.

3.8. Legal Representative. --

3.8.1. A conservator, temporary conservator or limited conservator appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code, §44A-1-1 *et seq.*, within the limits set by the order;

3.8.2. A guardian, temporary guardian or limited guardian appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code, §44-1-1 *et seq.*, within the limits set by the order;

3.8.3. An individual appointed as committee or guardian prior to June 9, 1994, within the limits set by the appointing order and W. Va. Code §44A-1-2(d);

3.8.4. A person having a medical power of attorney pursuant to the West Virginia Medical Power of Attorney Act, W. Va. Code §16-30-1 *et seq.*, within the limits set by the law and the appointment;

3.8.5. A representative payee under the U.S. Social Security Act, Title 42 US Code § 301 *et seq.*, within the limits of the payee's legal authority;

3.8.6. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Surrogate Act, W. Va. Code §16-30-1 *et seq.*, or the West Virginia Do Not Resuscitate Act, §16-30C-1 *et seq.*, within the limits set by the appointment;

3.8.7. An individual having a durable power of attorney pursuant to W. Va. Code §39B-1-101 *et seq.*, or a power of attorney under common law, within the limits of the appointment; or

3.8.8. An individual lawfully appointed in a similar or like relationship of responsibility for a patient under the laws of this state, or another state or legal jurisdiction, within the limits of the applicable statute and appointing authority;

3.8.9. If a legal representative has been appointed for or designated by any patient as having the authority to exercise on behalf of the patient one or more of the patient's rights under this rule, the facility shall permit the individual's legal representative to act on behalf of the individual and to exercise the authority to the extent granted to the legal representative in the order or other document naming the legal representative or pursuant to the statute authorizing the legal representative and to the extent that the legal representative's acts are not hostile or adverse to the best interests of the patient. This provision does not relieve the facility of the responsibility of informing the individual patient as required by this rule, to the extent that the individual is capable of understanding the matter, nor does it in any way deprive the patient of his or her legal rights granted under this rule or state or federal law or rules and regulations. If the patient has a legal representative, the name, address and telephone number of the legal representative shall be recorded in the patient's financial and clinical records, as applicable, along with the nature and scope of the authority granted to the legal representative by order, appointment or law. The facility shall also maintain a copy of the document documenting or designating the legal representative. The facility administrator and staff should note that the various types of legal representatives do not necessarily have the lawful authority to act on behalf of the resident in all matters which may require action by a legal representative. For example, a conservator may have responsibility for financial affairs, but not personal affairs, such as medical care.

3.9. Mechanical Restraints. -- Restraining devices of any type or form in accordance with 42 C.F.R. § 482.13(e). Restraining devices used solely as a means of coercion, discipline, convenience, or retaliation are prohibited.

3.10. Mental Health Facility. -- A state-operated psychiatric hospital that is accredited by The Joint Commission and licensed in accordance with W.Va. C.S.R. §64-12-1 *et seq.*

3.11. Neglect. -- Actions of omission or commission within the meaning of W. Va. Code §9-6-1(3), that violate 42 C.F.R. § 482.13, or that constitute a breach of the applicable standard of care, including the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

3.12. Patient. -- Any individual receiving treatment or services in or from a mental health facility who has been committed to the facility in accordance with W. Va. Code §27-5-1 *et seq.*, or W. Va. Code §27-6A-1 *et seq.*, or both.

3.13. Physical Abuse. -- Actions of omission or commission within the meaning of W. Va. Code §9-6-1(2), that violate 42 C.F.R. § 482.13, or that constitute a breach of the applicable standard of care. Physical abuse includes, but is not limited to, the infliction or threat to inflict physical pain or injury on, or the imprisonment of any patient, including pain associated with mental abuse, verbal abuse, sexual abuse, involuntary seclusion or any physical or chemical restraint not required to treat the patient's clinical symptoms, regardless of the patient's ability to understand or recognize the abuse or the willful infliction of injury, unreasonable confinement, intimidation, or punishment, with resulting physical harm, pain, or mental anguish, including staff neglect or indifference to infliction of injury or intimidation of one patient by another.

3.14. Seclusion. -- Actions or conduct defined by 42 C.F.R. § 482.13. Seclusion used solely as a means of coercion, discipline, convenience, or retaliation is prohibited.

3.15. Secretary. -- The Secretary of the West Virginia Department of Health and Human Resources.

3.16. Sexual Harassment. -- Physical advances or, nonverbal conduct that is sexual in nature that is either: (1) unwelcome, offensive, or creates a hostile environment, when the staff member is aware or has been informed that his or her conduct falls into one of these categories; or (2) is sufficiently severe or intense to be abusive to a reasonable person in the particular context.

3.17. State Operations Manual. -- The State Operations Manual Appendix A – Survey Protocol, Regulations and Interpretive Guidelines for Hospitals published by the Centers for Medicare and Medicaid Services, Rev. 200, 02-21-20. The State Operations Manual is accessible at <https://www.cms.gov>.

3.18. Verbal Abuse. -- Conduct that violates 42 C.F.R. § 482.13 or that constitutes a breach of the applicable standard of care. Verbal abuse includes, but is not limited to, the use of oral, written or gestured language or tone that is disparaging, frightening, humiliating, and/or derogatory to patients or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability.

§64-59-4. Adoption of Other Standards.

Notwithstanding anything herein to the contrary, the relevant portions of Conditions of Participation for Hospitals, 42 CFR Part 482, Subparts A through E; the State Operations Manual; and the accreditation standards for hospitals of the Joint Commission shall control: *Provided*, That to the extent there is a conflict between the federal regulations or the accreditation standards and the standards specified in this rule, the more stringent standard applies, except that, if there is a conflict between a standard set forth in this rule and a federal standard required for purposes of certification for participation in Medicare or Medicaid, or a standard or requirement for purposes of accreditation by the Joint Commission, the relevant federal standard or accreditation standard or requirement shall supersede any provision in this rule.

§64-59-5. Patients' Rights Generally.

5.1. Persons with behavioral health problems are more likely to have their human and civil rights denied because of their condition. Consequently, special attention and effort are required to assure that these human and civil rights are exercised and protected in all behavioral health services.

5.2. No Discrimination. All mental health facilities shall make available all services to persons in need without discrimination because of race, creed, color, sex, age, national origin, marital status, lack of wealth, disability, or duration of residence.

5.3. Civil Rights of Patients. Every patient served by any facility operated by the Department shall be permitted to exercise all of his or her civil rights, including but not limited to: civil service status and appointment; the right to register and vote at elections; the right to acquire and dispose of property; the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law; the right to enter into contractual relationships, to marry or to obtain a divorce; or the right to hold a professional, occupational or vehicle operator's licenses, unless he or she has been appointed a legal representative and the court has made a specific finding that the patient is incompetent to exercise the specific right or category of rights.

5.4. Responsibility of Administrator. It is the responsibility of the mental health facility's administrator to assure that each patient is informed of his or her rights and to make all necessary arrangements to allow the patient to exercise his or her rights.

5.5. Patients' Rights in A Facility or Group Setting Generally. Patients shall be housed with other

patients of similar age and activity levels unless specific reasons such as the need to protect a patient with a low level of adaptive skills and ability for self-defense are noted in the treatment plan.

5.6. Right to Least Restrictive Residential Setting. The patient has the right to access treatment in the least restrictive setting. The goal of treatment for a patient shall be to address needs so as to permit the patient to be in the least restrictive setting.

5.7. Right of Privacy. A patient has a right to as much privacy as the area in which he or she is residing will allow, and the right to move about freely unless his or her safety is threatened or otherwise clinically contraindicated.

5.8. No Deprivation of Rights as Punishment. No patient can be deprived of a right provided by law or regulation as punishment. No patient may be deprived of a right unless otherwise clinically indicated and, if so, then only for so long as is necessary to permit correction of the situation, behavior, or clinical needs of the patient.

5.9. Every patient, upon his or her admission to a mental health facility, and at any later time upon request, shall be given a summary of the rights afforded by this rule and as required by 42 C.F.R. § 482.13. A copy of this rule shall be posted in a prominent public place in each facility. Further, at least annually, the administrator or his or her designee shall confer with the patient advocates and collaboratively develop a brief summary of patient rights for distribution to patients.

§64-59-6. Patients' Right to Treatment.

6.1. General. All patients of mental health facilities have a right to treatment in the least restrictive setting in an outpatient community-based program to the extent resources and programs are available, and are further entitled to reasonable and available care and treatment that will promote the discharge of patients to the least restrictive setting. Treatment shall be provided in accordance with the relevant parts of 42 C.F.R. § 482 and the State Operations Manual.

6.2. Prohibition on Admission for Confinement. No individual shall be admitted to or detained in a mental health facility for the sole purpose of confinement except as otherwise permitted by law.

6.3. Trained and Competent Personnel. All care and treatment must be provided by qualified personnel and staff in accordance with 42 C.F.R. § 482.62.

6.4. Periodic Psychiatric Evaluation. Unless the patient's clinical condition requires otherwise, every patient of a mental health facility has the right to a psychiatric evaluation consistent with the applicable standard of care no less frequently than once every three months: *Provided*, That the initial psychiatric evaluation of each patient admitted to a mental health facility shall be conducted within 60 hours of the patient's admission in accordance with 42 C.F.R. § 482.61(b).

6.5. Appropriate Treatment, Program Plan, Treatment Planning, and Discharge Planning Based on Examination and Diagnosis. Every patient of a mental health facility has a right to treatment based on appropriate examination and diagnosis by a staff member operating within the scope of his or her professional license. All evaluations, program plans, initial treatment plans, master treatment plan, treatment, clinical care, development of assessment and diagnostic data, recordation of clinical progress, and discharge planning shall be done in accordance with 42 C.F.R. § 482; the State Operations Manual; and consistent with the applicable standard of care.

6.6. Accepted Standards. All care and treatment provided to each patient shall be provided in accordance with the applicable standard of care. Any care or treatment that deviates from the applicable standard of care or is inconsistent with 42 C.F.R. § 482 shall be specifically noted in the patient's medical record.

§64-59-7. Medical and Dental Care, Other Therapies, and Informed Consent.

7.1. Physical Examination. All patients in a mental health facility shall have a physical health examination at least every six months and shall receive treatment and care for physical illness consistent with the standard of care.

7.2. Freedom from Unnecessary or Excessive Medication. All patients of mental health facilities have a right to be free of excessive medication unless otherwise clinically indicated.

7.3. Limits on Use of Medication. A medication shall not be used as punishment, for the convenience of staff, or as a substitute for a program of treatment, or in quantities that interfere with the patient's treatment program: *Provided*, That nothing in this rule prohibits the use of medication that is clinically indicated and prescribed consistent with the applicable standard of care to manage the patient as clinically necessary or to promote the discharge of the patient, or both.

7.4. Medication Explained to Patient. The use of medication shall be fully explained to patients, and documentation of these explanations made part of the treatment team member's documentation and progress notes.

7.5. Dental Care. Dental care including screening and treatment shall be provided for all long-term patients in a state hospital, and when identified as a need by the patient's treatment team.

7.6. Speech Pathology, Audiology, Language Therapy. Speech, language and audiology screening, evaluation and therapy services shall be conducted and provided by qualified clinicians when clinically indicated for a patient.

7.7. Physical and Occupational Therapy. Physical and occupational therapy screening, evaluation and therapy services shall be conducted and provided by qualified clinicians when clinically indicated for a patient.

7.8. Voluntary Patients and Non-Committed Patients' Consent to Treatment. No treatment may be given to any voluntary patient who has not been formally committed by final proceedings pursuant to W. Va. Code §27-5-4, §27-6A-2(b) or §27-6A-3 without his or her written consent. The consents shall be obtained as a part of the admission package. If no informed consent is documented in the chart, the physician or person prescribing treatment shall provide such information to the patient before treatment is begun.

7.9. Consent to Treatment When Admitted for Examination. Except with respect to psychiatric emergencies, an individual has a right to refuse treatment. Individuals are sometimes admitted to a mental health facility under "custody for examination" procedures for whom treatment could be provided with minimal risk, but who, because of their mental condition do not refuse treatment but are not able to give informed consent to the treatment. In some cases, conditions exist which, if not treated, reasonably can be expected to cause permanent damage or severe pain. Treatment provided under such circumstances shall be done only if consistent with the applicable standard of care and the needs of the patient.

7.9.1. There is no statutory authority to provide treatment prior to actual commitment in the absence of informed consent. The procedures outlined in this rule are provided for use only when: (1) treatment is not refused; (2) no informed consent is forthcoming; (3) the risk of harm from failure to treat is demonstrably greater than the risks from treatment; and (4) the individual is unable to make any judgment to consent or refuse treatment.

7.9.2. When an individual is admitted to a mental health facility under "custody for examination," the individual shall be evaluated without the use of medication. If, as the result of examination, it is determined that the individual does exhibit signs and symptoms of psychiatric or other illnesses for which a recognized, commonly accepted course of treatment can be prescribed, the staff performing the evaluation shall follow the following procedures:

7.9.2.a. Determine whether the individual is clinically competent to understand the nature and purpose of the proposed treatment, as well as its prospective benefits and possible side effects. Both the examining physician and the patient advocate, at a minimum, shall agree to the individual's competence.

7.9.2.b. If the individual is determined to be able to make an informed decision relative to treatment, the proposed treatment shall be explained in detail and written consent to treatment shall be requested. No individual shall be asked to sign consent to treatment until the individual's competence to give consent has been determined. Treatment may be initiated if the individual gives consent, but a refusal to consent shall be honored and no treatment shall thereafter be forced upon the individual prior to receiving a written commitment order from the circuit court pursuant to a commitment hearing.

7.9.2.c. If it is determined that the individual is not capable of giving informed consent to treatment, the physician shall determine whether there is a significant likelihood that the symptoms for which the treatment is proposed are likely to become either more severe or long-lasting or both if treatment is withheld, and whether the proposed treatment is likely to produce side effects which may be harmful to the individual. Proposed treatments shall be those which are commonly accepted and recognized as appropriate for the condition being treated. In every instance, the more conservative of the available treatment options shall be chosen.

7.9.2.d. If the physician determines that there is risk of serious deterioration in the absence of treatment and that the proposed treatment carries relatively little risk to the patient, the physician shall present to the clinical director the facts upon which these conclusions were based.

7.9.2.e. If the clinical director agrees with the recommendations, an independent evaluation by another physician qualified in psychiatry or other appropriate medical specialty shall be provided.

7.9.2.f. All steps in this procedure, as well as all the facts on which treatment decisions are based, shall be documented in the medical record, and signed by the attending physician consistent with the applicable standard of care.

The procedures outlined in this section are not intended to apply to those individuals who are in need of life-saving medication for chronic medical conditions (such as diabetes, heart disease), who have been taking the medications prior to admission, and who are not actively refusing to continue the medication, notwithstanding that they may not currently be able to give consent.

7.10. Informed Consent. Consent is not valid unless it is informed consent. To assure informed consent,

the admitting physician shall explain and discuss the following with each patient:

7.10.1. The nature of the patient's mental condition;

7.10.2. The reasons for taking any proposed medication, including the likelihood of the patient's condition improving or not improving without the proposed medication;

7.10.3. That consent, once given, may be withdrawn at any time by stating the intention to any member of the treating staff;

7.10.4. The reasonable alternative treatments available, if any;

7.10.5. The type, range of frequency and amount, including the use of PRN (as needed) orders, the method (oral or injection) of administration, and the duration of taking the proposed medication;

7.10.6. The probable side effects to the proposed medication known to occur commonly, and any particular side effects likely to occur with the particular patient;

7.10.7. Possible additional side effects of the proposed medications which may occur to patients taking the medication beyond three months. The patient shall be advised that the side effects may include persistent involuntary movement of the face or mouth and might at times include similar movement of the hands and feet, and that these symptoms of tardive dyskinesia are potentially irreversible and may appear after medication has been discontinued; and

7.10.8. His or her rights under this rule.

7.10.9. This explanation and discussion shall be documented and signed by physician and patient.

7.11. Requirement for Consent. Antipsychotic medication may be administered to an adult patient only after the patient has given informed, voluntary consent in writing, except as provided in the procedures set forth in this subsection or as required by the applicable standard of care.

7.11.1. Consent shall be considered to be informed only after the patient has been provided with the information specified in subsection 7.10 of this rule by the physician prescribing the medication.

7.11.2. The patient shall be asked to sign the consent form utilized in obtaining informed consent from voluntary patients, and this signed consent form shall be included in the legal section of his or her chart. In the event that the patient has been shown the form and communicates consent but does not wish to sign the written consent form, it is sufficient for the physician to place the unsigned form in the patient's record together with the notation that while the patient understands the nature and effect of antipsychotic medication and consents to the administration of the medication, the patient does not want to sign a written consent form.

7.11.3. Consent is effective for the duration of the patient's stay in the facility unless it is revoked by the patient.

7.12. Revocation of Consent. A patient who has consented to medication may refuse a specific medication at any time, by stating or writing that he or she does not wish to take the medication. Medication may not then be given to the patient, orally or by injection, except as authorized in a psychiatric

emergency. A revocation of consent shall be documented on the consent form by the treating physician and renders the previously given consent void.

§64-59-8. Right to Refuse Treatment.

8.1. General. As a participant in the program planning process, the patient has the right to exercise a voice in his or her program plan and to object to or refuse aspects of the plan.

8.2. Use of Internal Discussion, Negotiation and Grievance Procedure. The patient's right to object to or refuse treatment is recognized as legitimate and shall be responded to in accordance with the provisions of the patient grievance procedure if informal discussion and negotiation do not resolve differences.

8.3. Alternatives Offered and Provided. The treatment team for any patient who has refused psychotropic medications or other recommended therapy shall meet and work to ensure that an agreed-upon effective alternative treatment is offered and provided if the patient consents.

8.4. Oral Refusal Overrides Prior Written Consent. An individual patient's oral refusal to accept medication or other treatment always overrides prior written consent except in emergency situations as defined in this rule or as required by the applicable standard of care.

8.5. Last Resort Procedure When Patient Refuses Treatment. In those instances when an involuntarily committed patient rejects any proposed treatment and all attempts at negotiating an acceptable alternative have failed, then the most conservative, least intrusive treatment approach that is acceptable under the applicable standard of care for the diagnosed condition and which produces minimal potential side effects may be imposed over the objections of the patient if all the following conditions are documented in the patient's medical record:

8.5.1. The patient's refusal is a product of his or her illness;

8.5.2. The proposed treatment is recognized as appropriate, effective and within accepted standards of practice;

8.5.3. The proposed treatment is approved by the clinical director;

8.5.4. The opinion of a second qualified practitioner concurs with the proposed treatment; and

8.5.5. The patient advocate is provided an opportunity to raise legitimate concerns on the part of the patient.

§64-59-9. Research and Experimental Treatment.

All research, studies, and investigations conducted in mental health facilities to which this rule is applicable, which use facility staff, records or patients shall be approved in writing in advance by the Department of Health and Human Resources and the Institutional Review Board. This advance approval is required whether the research, study or investigation is conducted by Department of Health and Human Resources staff or by others. The federal regulations Protection of Human Subjects, 45 C.F.R. Part 46, are hereby adopted by reference, and all research, studies, or investigations conducted in mental health facilities shall comply with this rule.

§64-59-10. Seclusion and Restraints.

10.1. General. Patients have the right to freedom from seclusion or mechanical restraints unless otherwise clinically indicated and consistent with the applicable standard of care as provided herein. Seclusion and restraint shall only be used when there is imminent danger that the patient will injure himself or herself or others and when all other less restrictive measures have been exhausted or no less restrictive measures are reasonably available. Seclusion or mechanical restraints that are used solely as a means of coercion, discipline, convenience, or retaliation are prohibited.

The use of restraint or seclusion shall only be administered in accordance with the order of a physician or psychiatrist or, in their absence, an advanced nurse practitioner or physician's assistant responsible for the care of the patient. A registered nurse who is trained in crisis intervention may initiate the emergency application of restraint or seclusion prior to obtaining such an order: *Provided*, That the emergency application of restraints or seclusion requires that the registered nurse obtain an order forthwith after the restraint or seclusion has been applied. Under no circumstance may orders for the use of restraint or seclusion ever be written or provided as a standing order or on an as needed basis.

10.2. Seclusion and Restraint. Seclusion of any patient or mechanical restraints for any patient, or both, may be administered only as expressly permitted by 42 C.F.R. § 482.13(e). The use, time period for use, and documentation of the use of seclusion or mechanical restraints, or both, in the patient's medical record shall be done in accordance with 42 C.F.R. § 482 and the State Operations Manual: *Provided*, That seclusion or mechanical restraints for developmentally disabled patients are prohibited and only the "time out" procedure developed specifically for each such patient in his or treatment plan and in accordance with applicable law may be used for a developmentally disabled patient.

All personnel at a mental health facility who administer or assists in the administration of seclusion or the use of mechanical restraints shall undergo training as required by 42 C.F.R. § 482.13(f) and shall further complete subsequent periodic training no less frequently than annually regarding the use of seclusion and or mechanical restraints.

10.3. Time. The time spent in seclusion shall be the shortest time required for the patient to regain his or her self-control.

10.4. Seclusion Inappropriate for Suicidal Patients. Seclusion shall not be used for a patient who is actively suicidal or for a patient for whom constant observation has been ordered. If the physician determines that seclusion is necessary, the need for such seclusion shall be documented in the patient's medical record and one-on-one observation of the patient shall be required.

10.5. Items Entitled During Seclusion. A patient who is placed in seclusion is entitled to clothing, a bed, a mattress, bedding, reading matter, stationery, and similar items. Only when it is determined that a specific item may be harmful to the patient may the item be withheld. The order for seclusion shall specify those items which are to be removed and the reasons for their removal.

10.6. Supervision of Seclusion Room. Any room used for seclusion shall be in an area that permits constant supervision by staff.

10.7. Seclusion Room Supervision. The registered nurse in charge of the unit or shift is responsible for assuring that the following seclusion room checks, and procedures are carried out:

10.7.1. Each patient in seclusion shall be checked no less frequently than every five minutes and as required by 42 C.F.R. § 482.13. The seclusion room "check sheet" shall be updated to assure the presence and safety of the patient in the seclusion room;

10.7.2. The patient shall have access to fluids and to the toilet hourly. Meals shall be delivered at regular meal times. Compliance with these requirements shall be documented on the check sheet; and

10.7.3. The case manager, when available, or the registered nurse in charge of the unit or shift shall talk directly with the secluded patient and assess the need for continued seclusion at least once every hour.

10.8. Supervision of Mechanical Restraints. Supervision of patients in mechanical restraints shall be on a one-to-one basis for the duration of the time the restraints are in place. The procedure for the application of mechanical restraints shall be followed to assure that no restraint is applied in a manner as to produce physical pain or damage to the patient. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each two hours in which restraint is employed.

10.9. Handcuffs Unacceptable. Handcuffs are not considered an acceptable form of restraint for patients and shall not be used for that purpose.

10.10. Continued Hourly Assessment. The case manager, when available, or the registered nurse in charge of the unit or shift shall talk directly with the restrained patient and assess the need for continued restraint at least once every hour.

10.11. Punishment or Convenience. Mechanical Restraints shall not be used as punishment or for the convenience of staff.

10.12. Limitation on Use of Chemical Restraint. Drugs or medications shall not be used as punishment, for the convenience of staff, as a substitute for adequate staffing, or as a substitute for a treatment plan. Drugs and medication may only be administered pursuant to informed consent in the absence of a psychiatric emergency.

10.13. Copies. All documentation related to the seclusion or restraint of a patient shall be done in accordance with the applicable standard of care, 42 C.F.R. § 482.13, and the State Operations Manual.

10.14. Trial Release Procedure for Seclusion and Restraint. Seclusion and restraint are intended to provide external controls for the protection of the patient or to prevent the patient from injuring others. Continued use of the controls beyond the time when they are clinically indicated is inappropriate. It is the responsibility of the nurse on duty to assure that the seclusion or restraint measures are stopped when the behavior of the patient makes their continued use unnecessary and to further inform the ordering physician promptly of events that support the cessation of seclusion or restraints.

§64-59-11. Confidentiality and Records.

11.1. Confidential Information

11.1.1. Communications and information obtained in the course of treatment or evaluation of any patient is considered to be confidential information in accordance with 42 C.F.R. § 482.13, including: the fact that a person is or has been a patient; information transmitted by a patient or his or her family for purposes relating to diagnosis or treatment; information transmitted by persons participating in the accomplishment

of the objectives of diagnosis or treatment; all diagnoses or opinions formed regarding a patient's physical, mental or emotional condition; any advice, instructions or prescriptions issued in the course of diagnosis or treatment; and any record or characterization of these matters. Confidential information does not include information which does not identify a patient, information from which a person acquainted with a patient would not recognize the patient, and encoded information from which there is no possible means to identify a patient.

11.1.2. In order to protect the patient from demeaning remarks about his or her condition, medical and behavioral health care professionals, staff and other employees shall not discuss a patient's assessment, diagnosis, treatment, or any other aspects of his or her condition among themselves unless this discussion directly relates to the patient's treatment.

11.2. Disclosure of Confidential Information

11.2.1. Confidential information may be disclosed:

11.2.1.a. In a proceeding under W. Va. Code §27-5-4 to disclose the results of an involuntary examination made pursuant to W. Va. Code §27-5-2 or §27-5-3;

11.2.1.b. In a proceeding under W. Va. Code §27-6A-1 *et seq.* to disclose the results of an involuntary examination made pursuant thereto;

11.2.1.c. Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section. Once a subpoena is received it is the duty of the custodian of the records to request a determination from the court having jurisdiction to make this finding before the records are provided;

11.2.1.d. To protect against a clear and substantial danger of imminent injury by a patient to himself or herself another; and

11.2.1.e. For treatment or internal review purposes, to staff of the mental health facility where the patient is being cared for or to other health professionals involved in treatment of the patient.

11.2.2. Patients shall be informed upon the commencement of any contact with medical or behavioral health professionals that their rights to confidentiality are limited in the ways set forth in this rule.

11.3. Authorization for Disclosure

11.3.1. All consents for the transmission or disclosure of confidential information shall be in writing and signed by the patient or by his or her legal guardian as required by applicable law. Every person signing an authorization shall be given a copy.

11.3.2. Every person requesting an authorization shall inform the patient or authorized representative that refusal to give an authorization will in no way jeopardize his or her right to obtain present or future treatment except where and to the extent disclosure is necessary for treatment of the patient or for the substantiation of a claim for payment from a person other than the patient.

11.4. Clinical Records

11.4.1. A clinical record shall be maintained at a mental health facility for each patient treated by the facility. The record shall contain all matters relating to the admission, legal status, treatment of the patient and all pertinent documents relating to the patient, including detailed results of: (1) periodic examinations; (2) individualized treatment programs, including the written, dated, individualized plan of care stating the specific outcome of treatment goals and the progress made towards realizing those goals, and dated notations of any change of outcome, treatment goals or plan of care; (3) evaluations and re-evaluations; (4) orders for treatment; and (5) orders for application of mechanical or chemical restraints or seclusion.

11.4.2. Records. A facility shall maintain a written patient record on each patient, which shall include the following:

11.4.2.a. All information contained in the pre-admission data package, the post-admission data base, and the discharge records, plus the patient's sex, race, ethnic origin, next of kin, and type and place of employment;

11.4.2.b. A description of the patient's physical and mental status at the time of admission, a record of each physical examination, psychological report, or any other evaluations, including all those required by this rule, reports of laboratory, roentgenographic, or other diagnostic procedures, and reports of medical and surgical services when performed;

11.4.2.c. Physical and emotional diagnoses that have been made using a recognized diagnostic system;

11.4.2.d. A copy of the patient's individualized treatment plan and any modifications and evaluations of the plan, with an appropriate summary to guide direct care staff in implementing the plan;

11.4.2.e. The findings made in periodic review of the patient's response to his or her individualized treatment plan, with directions as to modifications, prepared by a professional involved in the patient's treatment program;

11.4.2.f. A copy of the post-institutionalization plan and any modifications to the plan, a summary of the steps that have been taken to implement that plan, and all social service reports;

11.4.2.g. A medication history and status, as required by this rule;

11.4.2.h. A signed order by authorized personnel for every occasion on which seclusion, mechanical restraints, or chemical restraints were used;

11.4.2.i. A description of any extraordinary incident or accident involving the patient, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including all reports of investigations of mistreatment, as required by this rule;

11.4.2.j. Documentation of the consent of the patient or an appropriate legal representative for admission or treatment;

11.4.2.k. Correspondence concerning the patient's treatment signed and dated;

11.4.2.l. Documentation of the patient's and, as appropriate, family members' involvement in the patient's individualized treatment plan;

11.4.2.m. A summary of the extent and nature of any work activities and the effect of the activity upon the patient's progress;

11.4.2.n. A discharge summary, which shall be entered in the patient's record within a reasonable period of time, not to exceed 30 days, following discharge; and

11.4.2.o. A plan for aftercare.

11.4.3. If for any reason a patient's rights are restricted as permitted within this rule, the restriction, the time limits of the restriction, the reason for the restriction and any other information relevant for the restriction shall be made a part of the patient's fiscal or clinical record, as applicable. The entry of the restriction in the record shall be signed by the patient's treating physician.

11.4.4. Each patient's records shall be readily accessible to all professional staff. Appropriate records shall be maintained on a unit, and direct care staff involved with a particular patient shall have access to those portions of a patient's records relevant to treatment.

11.4.5. The Health Information Management Department (Medical Records) shall maintain, control, and supervise the patient records, and is responsible for maintaining their quality in accordance with 42 C.F.R. § 482.24 and the State Operations Manual.

11.5. Disclosure of Records.

11.5.1. Records shall only be disclosed:

11.5.1.a. Upon written consent of the patient pursuant to subsection 11.3 of this rule to any person or entity;

11.5.1.b. Upon the grounds set forth in subsection 11.2 of this rule;

11.5.1.c. To the attorney of the patient whether in conjunction with pending proceedings. In the interests of economy, the patient's attorney may be requested, but not required, to review the record to determine what portions of the record he or she wishes to have copied. If the attorney does not agree to the request, however, the entire record shall be provided. The facility is entitled to charge for the actual cost of copying any voluminous documents required where the patient has funds to pay;

11.5.1.d. To providers of health, social, or welfare services involved in caring for or rehabilitating the patient. The information shall be kept confidential and used solely for the benefit of the patient. No written consent is necessary for employees of the department, comprehensive behavioral health centers serving the patient, or advocates under contract with the department; or

11.5.1.e. With the consent of the patient or a person authorized to act for the patient, and the consent of the Secretary of the Department of Health and Human Resources, to:

11.5.1.e.1. Persons or agencies that require the information in order to provide continuing

service to the patient; and

11.5.1.e.2. Insurers or other third-party payers, only information as is necessary to permit payment.

11.5.2. There is an obligation on the part of the facility staff to assure that a patient is provided access to the record in a clinically responsible manner. For those patients currently in treatment who ask to see records, a qualified clinical staff member should review the record with the patient providing interpretation and clarification as may be needed to assure that the patient has an accurate understanding of the content. Copies of any part of the record may be provided to the patient if requested and if, in the judgment of the interdisciplinary team and the physician, it would not be clinically inadvisable. Any discussion with the patient regarding the clinical record shall be documented in the record. When a former patient demands access to records, the same process shall be followed as described in this subdivision. If the request is made by mail and the patient indicates an inability to visit the facility for records review, arrangements shall be made through the behavioral health center serving the county of the patient's residence for review of the record with a clinical staff member of the behavioral health center, following the process outlined in this subsection.

§64-59-12. Right to Unrestricted Communication.

12.1. Generally. Every patient has the right to unimpeded and private communication with whomever the patient chooses by mail, telephone, visits, or otherwise, except as specified in this rule.

12.2. Written Correspondence.

12.2.1. Every patient is entitled to communicate by sealed mail, or otherwise, with any persons, including official agencies inside, or outside, the facility. This right may not be denied, restricted, or infringed in any manner, except as specified in subsection 12.4 of this rule.

12.2.2. The mental health facility shall provide a return address to patients that does not identify the institution. Unless the patient requests that the return address be withheld, it is the responsibility of the mental health facility to ensure that the name and return address are inscribed legibly on all outgoing patient mail without identification of the institutional nature of the facility.

12.2.3. Written correspondence shall not be opened or read by staff. Mail returned by recipients to a patient marked "REFUSED" shall be returned, unopened, to the patient.

12.2.4. Indigent patients shall be provided letter writing materials, including stamps.

12.2.5. There shall be no delay in transmission of outgoing or incoming mail.

12.3. Telephone.

12.3.1. Patients shall have the unimpeded and uncensored right to access to a telephone for the purpose of calling whomever they wish, except as specified in subsection 12.4 of this rule or as otherwise clinically contraindicated. If it is necessary for a patient to be accompanied to the telephone by a staff member, or the assistance of a staff member is needed in making a call, the necessary arrangements shall be made by the staff and the confidentiality of the patient's conversation shall be fully protected by the staff member assisting the patient.

12.3.2. Patients shall have reasonable access to a telephone for calls on the patient's unit. Phones shall be available for patients to receive regular incoming calls.

12.3.3. Phone areas shall afford reasonable privacy and comfort.

12.4. Restrictions. Any deviation from the telephone and mail rights afforded by subsections 12.2 and 12.3 of this rule can only be authorized by the interdisciplinary team or the physician for a time specified by the team or as otherwise clinically indicated. A complete report relative to the restriction of telephone or mail rights and the reasons therefor shall be made a part of the patient's medical record, signed and dated by the patient's attending physician, and reflected in the patient's nursing care plan. Restrictions of mail and telephone rights shall expire in three days unless reviewed.

12.5. Visitors.

12.5.1. Every patient has the unimpeded right to refuse or receive (during all reasonable hours) visitors as permitted by 42 C.F.R. § 482.13(h), except as specified in subdivision 12.5.2 of this rule or as otherwise clinically contraindicated. Visitation shall accommodate the working schedules of visitors. The mental health facility shall provide privacy for these visits. Visitors may take patients off grounds as approved by the patient's treatment team.

12.5.2. The right to visitation can only be limited by the treatment team, for critical clinical reasons. A complete report relative to the restriction of visitation rights and the reasons for the restriction shall be made a part of the patient's medical record, signed and dated by the patient's attending physician, and reflected in the patient's nursing care plan. The restriction expires in three days unless reviewed.

12.5.3. All visits shall be contact visits and facilities shall be provided for privacy with no monitoring of conversations.

§64-59-13. Personal Clothing and Possessions.

13.1. Every patient is entitled to possess and wear his or her own personal clothing, dentures, eyeglasses, hearing aid, and orthopedic appliances.

13.2. Every patient is entitled to constant access to personal possessions such as diaries, Bibles, or other books, not withheld for safekeeping by the mental health facility or the patient's family.

13.3. The patient's attending physician or behavioral health care professional shall justify, in writing in the patient's medical or behavioral health care record the withholding of personal clothing, or other possessions such as those listed in subsections 13.1 and 13.2 of this rule. The statement shall be dated, signed, and reviewed monthly, showing dates and signatures of the reviews, and shall show that possession of the personal effects would be harmful to the patient or others.

§64-59-14. Outdoor Exercise and Other Recreational Programming.

14.1. Outdoor Exercise. Every patient in an inpatient or residential facility has the right to the opportunity for a minimum of one hour of outdoor access and exercise on a daily basis seven days per week except as otherwise clinically contraindicated. This shall be scheduled and afforded at the time during the day when the weather and temperature are most appropriate, depending on the season.

14.2. Outdoor activity and exercise shall be a part of every inpatient's treatment plan.

14.3. Activity and Recreational Programs

14.3.1. Individual programs shall provide a balance of active and passive activities, as well as opportunities for daily exercise and outdoor activities to the extent that the patient is clinically and medically able to participate.

14.3.2. While individual activities are scheduled to meet specific therapeutic goals, each patient should have an opportunity to participate in social recreation programs of choice.

14.3.3. Social activities should be planned at several levels: (1) small, unit group activities such as games, music and exercises; (2) individual activities such as magazines, puzzles, books and drawing materials; (3) larger off-unit programs such as dances, walks and sports; and (4) community-based activities utilizing existing community resources such as movies, sightseeing, entertainment, sports, bowling, camping, hiking, picnics, etc.

14.4. Community Integration. Unless specifically contraindicated by a patient's interdisciplinary program plan or physician, each patient, other than acute psychiatric and out-of-contact geriatric patients, shall be provided the opportunity to engage in the following activities as determined by the patient's treatment team in its clinical discretion and in the patient's best interests:

14.4.1. Shop in the community;

14.4.2. Eat in a public place in the community;

14.4.3. Participate in a major recreational activity in the community;

14.4.4. Attend a public event in the community;

14.4.5. Worship in the community on a regular basis; and

14.4.6. Visit the local public library on a regular basis.

14.5. Interdisciplinary Treatment Plan.

14.5.1. Activity staff shall serve as members of each patient's interdisciplinary team when appropriate. Activity staff are responsible for a recreational and activity assessment for each patient. The recreational and activity assessment shall indicate the level of appropriate recreational and social activities for the patient, the patient's areas of strengths, and the limitations of the patient. Based on the assessment, the activity staff shall work with the patient and other members of the interdisciplinary team to develop a recreational and activity program that meets the identified needs of each patient. Activity staff shall provide ongoing documentation of the patient's response to the implementation of the program.

14.5.2. Implementation of community integration as described in subdivision 14.3.3 of this rule and participation in recreational activities as described in subdivision 14.3.2 of this rule shall be documented in each patient's record.

§64-59-15. Physical Environment.**15.1. Mental Health Facilities Generally**

15.1.1. Facilities shall provide an environment that complies with 42 C.F.R. § 482.41 and respects the human dignity of the patients. The grounds of the facilities shall have adequate space for the facility to carry out its stated goals. All facilities shall be accessible to individuals with a disability.

15.1.2. Behavioral health facilities shall provide facilities which afford patients privacy, dignity, comfort, safety, and sanitation.

15.1.3. There shall be appropriate and sufficient lighting in each facility, and whenever possible and consistent with the safety of patients, the lighting shall be controlled by patients.

15.1.4. Whenever possible, the environment shall provide views of the outdoors.

15.1.5. All rooms shall provide adequate ventilation and comfortable temperatures. Direct outside air ventilation shall be provided to each patient's room or the room shall have operable windows unless otherwise contraindicated. Ventilation shall be sufficient to remove all undesirable odors.

15.1.6. Every room shall be kept clean, odorless, and insect free.

15.1.7. Areas with the following characteristics shall be available to meet the needs of patients:

15.1.7.a. Areas that accommodate a full range of social activities, from two person conversations to group activities;

15.1.7.b. Attractively furnished areas with a supply of comfortable chairs adequate to meet patient requests and needs for seating, and areas in which a patient can be alone, when appropriate; and

15.1.7.c. Attractively furnished areas for private conversations with other patients, family, or friends.

15.1.8. Inpatient life shall be structured so that it is possible for patients to wear and use glasses, hearing aids, crutches, braces, rolling walkers, and similar aids in their units and rooms.

15.1.9. The use and location of noise-producing equipment and appliances, such as televisions, radios, and record players shall not interfere with other therapeutic activities.

15.1.10. A place and equipment shall be provided for table games and individual hobbies. Equipment and games shall be stored on shelves that are accessible to patients as appropriate. An adequate budget for the materials and equipment shall be maintained so that items which are lost, broken, or stolen can be replaced.

15.1.11. Unless contraindicated by the IPP, male and female patients may be housed on the same inpatient units and in a manner that allows interaction and as closely resembles noninstitutional living as possible.

15.1.12. Facilities that routinely serve non-ambulatory patients or medically fragile patients shall

also comply with the following requirements:

15.1.12.a. Each patient's bed shall have a call signal that registers at the nursing station;

15.1.12.b. Beds shall be placed so that patients are not exposed to temperatures outside of normal comfort range; and

15.1.12.c. The facility shall establish a program for identifying, investigating, preventing, and controlling infections; monitoring the health status of employees; and providing aseptic procedures and isolation techniques.

15.2. Bedrooms in Inpatient Facilities.

15.2.1. Each facility shall provide furnishings and equipment which are clean and in good condition, and appropriate to the age and physical conditions of the patients. Every patient shall be provided with a normalized, comfortable, and attractive living space.

15.2.2. An individual bed shall be provided for each patient.

15.2.3. No person shall be housed in a bedroom with more than one other person. Sleeping areas shall be assigned based on the patient's need for group support, privacy, and independence.

15.2.4. All bedrooms shall have outside windows, be above ground level, and provide adequate space for patient privacy.

15.2.5. Ample closet and drawer space shall be provided for storing clothes, personal hygiene articles, and other personal property or property provided for ~~the~~ patients' use.

15.2.6. Bathrooms and bedrooms shall have doors and other barriers suitable to provide privacy.

15.2.7. All mattresses shall be fire and urine resistant and without appreciable sag. All reasonable requests by patients for new mattresses shall be honored.

15.2.8. Blankets with holes or stains shall be cleaned and repaired or replaced.

15.2.9. Patients shall be allowed to keep and display personal belongings and to add personal touches to the decoration of their rooms unless otherwise contraindicated.

15.2.10. Articles for grooming and personal hygiene shall be readily available in a space reserved near the patient's sleeping area.

15.2.11. Patients shall have ready access to the grounds and to their bedrooms unless contraindicated by their IPP or attending physician.

15.2.12. All windows in bedrooms shall have curtains or blinds and all beds shall have bedspreads.

15.3. Bathrooms, etc. in Inpatient Facilities.

15.3.1. The facility shall have toilets, water fountains, bathing and hand washing facilities which are

accessible, private, and easily usable, including special equipment for persons with disabilities. All toilets shall have toilet seats and all toilet stalls shall have doors or promote privacy.

15.3.2. There shall be easily accessible and adequate toilet paper, bath towels, soap, linen, bedding, etc. Clean towels and bed linens shall be provided at least twice weekly.

15.3.3. All sinks, showers, and bathtubs used by patients shall dispense hot and cold water and be provided with hot and cold water at all times except as required for repair or maintenance. All showers shall have doors or curtains and all bathtubs shall be screened for privacy.

15.4. Other Areas

15.4.1. Bathrooms are to be cleaned as often as necessary every day, and bathtubs shall be cleaned after the bath of each patient. The smell of harsh disinfectants shall be eliminated.

15.4.2. There shall be separate clean and dirty linen storage areas.

15.4.3. Patients' personal laundry shall be done at least two times per week. Patients' rooms and common areas shall be thoroughly cleaned at least two times per week.

15.4.4. Living areas shall have comfortable chairs appropriate for patients in numbers sufficient to seat every patient desiring to sit in a chair unless otherwise contraindicated.

15.4.5. An adequate number of lamps shall be provided in every living area.

15.4.6. Clocks and calendars shall be provided in at least major use areas.

15.4.7. Mirrors shall be placed at reasonable heights in appropriate places to aid in patients' grooming.

15.4.8. Books, magazines, and arts and crafts materials shall be available in accordance with patients' backgrounds and needs. An adequate library shall be maintained at each facility.

15.4.9. Living, program, and working areas shall be quiet, appropriately designed, and conducive to programs. Acoustical ceiling tiles shall be installed wherever noise levels remain high.

§64-59-16. Food.

16.1. Meals Generally. Food and dietetic services shall comply with 42 C.F.R. §§ 482.28, 482.41, and 482.42; the State Operations Manual; and the FDA Food Code.

§64-59-17. Patients' Labor, Earnings and Funds.

17.1. Patient Labor Generally

17.1.1. No patient may be required to perform labor which involves the operation and maintenance of the mental health facility. Privileges or release from the facility shall not be conditional upon the performance of labor governed by this rule.

17.1.2. Patients may voluntarily engage in labor which involves the operation and maintenance of the mental health facility if the labor is compensated in accordance with the requirements of relevant state and federal law and regulations.

17.1.2.a. Patients who are employed to perform work of economic benefit to the facility shall be paid wages which are commensurate with those paid workers with no disability for essentially the same type, quality, and quantity of work.

17.1.2.b. The facility shall maintain for each patient who is employed by the facility, and have available for inspection, records of: the prevailing wages paid workers with no disability in similar jobs; production standards for average workers with no disability performing similar jobs; and the productivity of each patient. These records shall be reviewed at least quarterly.

17.1.2.c. Patients may not be regularly involved in the care, feeding, clothing, training, or supervision of other patients.

17.2. Vocational Training. Patients may be required to perform vocational training tasks which do not involve the operation and maintenance of the facility, so long as an assignment:

17.2.1. Lasts no longer than four months;

17.2.2. Is an integrated part of the patient's interdisciplinary program plan;

17.2.3. Has been approved as a program activity by the professional responsible for the vocational training program;

17.2.4. Is supervised by a staff member.

17.3. Personal Housekeeping. Patients may be required to perform personal housekeeping tasks, such as making their bed, tidying their room, doing their laundry, etc.

17.4. Work Training or Industrial Therapy Program.

17.4.1. Before a patient begins any work training or industrial therapy program, there shall be a written plan outlining goals, activities, and job responsibilities within the program.

17.4.1.a. Work Activity Center. The entire facility, or any part thereof, may be designated a work activities center if no patient participating in work activities is capable of more than 25 percent of the productivity of workers with no disability performing the same or comparable type work. Every patient involved in the program shall be evaluated in terms of his or her level of productivity, and the evaluation shall be reviewed and documented no less than every three months. An exception may be made when an individual patient is unable to meet the productivity level of the rest of the group. For these patients, minimum wages below those paid to other workers may be permitted.

17.4.1.b. Sheltered Workshops. Approval for a sheltered workshop may be obtained for a specific workshop program. Sheltered workshops operated by a facility are required to be in compliance with applicable state and federal laws, rules, and regulations.

17.4.1.c. Training and Evaluation Program. A certificate can be obtained for programs which

provide competent instruction and supervision and are designed to determine a working patient's potential and to teach adjustment to a work environment or the skills related to one or more types of work. The duration of the evaluation and training shall depend upon the total facts of the situation, but in no case shall exceed 12 months. Time spent in an employment relationship in the institution, prior to the effective date of participation in the training program shall be counted in determining the duration of the work evaluation and training. It is not permissible to place a patient who has been involved in any work situation within the facility for more than 12 months in a work and training evaluation program without pay.

17.5. Access to Personal Funds.

17.5.1. There shall be procedures, in writing, to ensure a patient's reasonable access to his or her personal funds.

17.5.2. Patients not adjudicated incompetent shall have access to their funds whenever and in any amount they wish unless their use of funds proves detrimental to their course of treatment. In these cases, the patient's treatment team shall document in the patient's medical record the withholding of funds for a limited period of time.

17.5.3. Patients adjudicated incompetent and appointed a conservator or other with financial authority shall have the same access to their funds as set forth in subdivision 17.5.2 of this rule, subject to reasonable limitations by their conservator. In these cases, the patient's medical record shall document the withholding of the patient's funds or the limitations set for the patient's access to his or her funds.

17.5.4. A patient or relative may be required to pay for care and treatment in a mental health facility according to the ability to pay; however, no patient shall be denied treatment because they are not able to pay.

17.6. Notification. All patients assigned to a work situation shall be informed of the rights provided by this rule. The information shall be provided as follows:

17.6.1. The patient workers and their responsible relative or legal representative may be notified in writing of these rights;

17.6.2. Written notification of rights under this rule shall be posted in every living unit; and

17.6.3. Efforts shall be made to notify all patients orally by group meeting or other direct oral notice.

§64-59-18. Employee Responsibilities.

18.1. Duty of All Employees. Every employee has the responsibility to assure that all rights afforded to patients by applicable state and federal laws, rules, and regulations, including this rule, are protected and afforded to patients.

18.2. Abuse and Neglect. No employee shall verbally or physically abuse or neglect any patient.

18.3. Sexual Harassment. Employees shall not engage in sexual harassment of patients.

18.4. Mandatory reporting. Every employee has a duty to report any incident of actual or suspected

abuse or neglect to the administrator and to adult protective services workers.

18.5. Training of Employees. The administrator has the duty to train and educate all new employees and all current employees on a periodic and consistent basis on the content of this rule so that all employees are thoroughly familiar with it.

18.6. Staff shall be aware of W. Va. Code §27-12-3 which reads as follows: "If any person shall entice any patient from any state hospital who has been legally committed thereto, or attempt to do so; or shall counsel, cause, influence or assist, or attempt to do so, any such patient to escape or attempt to escape therefrom or harbor or conceal any such patient who has escaped therefrom; or shall, without the permission of the superintendent of any such hospital, give or sell to any such patient, whether on the premises thereof or elsewhere, any money, firearms, drugs, cigarettes, tobacco, or any other article whatsoever; or shall receive from the hands of any such patient anything of value, whether belonging to the state or not; or shall cause or influence or attempt to cause or influence any such patient to violate any rule or to rebel against the government or discipline of such hospital; or shall tease, pester, annoy, or molest any such patient, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than \$10 nor more than \$100, or imprisoned not exceeding six months, or, in the discretion of the court, both fined and imprisoned. If any person shall aid or abet the commission of any of the foregoing offenses, or aid or abet an attempt to commit the same, he shall be guilty of the same as if he were the principal, and be punished as above provided. In the trial of an indictment for committing any of the above-named offenses, the accused may be found guilty of an attempt to commit the same, or of aiding or abetting another in committing or in an attempt to commit the same. If any person, not her husband, shall have sexual intercourse with any female patient who is a patient of any of said state hospitals, he shall be guilty of a felony, and, on conviction thereof, shall be confined in the penitentiary not less than 10 nor more than 15 years; and if such female patient be under 16 years of age, he shall be imprisoned not less than 10 nor more than 20 years."

§64-59-19. Juveniles.

No person under 18 years of age shall be admitted to a mental health facility as defined herein.

§64-59-20. Patient Advocacy and Grievance Procedure.

20.1. Patient Advocacy. There shall be persons designated as patient or resident advocates who are independent of the facility management in every mental health facility.

20.2. Right to File A Grievance. A grievance may be initiated by a patient or patient advocate, a member of a patient's family, a facility employee or other individual on behalf of any patient of a mental health facility: *Provided*, That the patient advocate must comply with 42 C.F.R. § 482.13(a)(2) for filing a grievance and the prompt resolution of grievances. A grievance may involve any aspect of a patient's care, treatment, housing, services, accommodations, etc. and is not restricted to alleged violations of a patient's rights or abuse of the patient.

20.2.1. Filing of A Grievance. A grievance may be registered by a patient or someone on behalf of the patient, orally or in writing, to any facility staff member or to the patient advocate.

20.2.2. Oral Grievance. When a grievance is orally registered by a patient to a staff member or a patient advocate, the staff member or the patient advocate shall promptly assist the patient in reducing the grievance to writing on the standard grievance form.

20.2.3. A supply of grievance forms shall always be maintained in the administrative offices and on all units or offices of the facility for continuous access by patients. Each facility shall make patients aware of their rights and ensure access to this grievance procedure.

20.2.4. Filing the Grievance. All grievances shall be reduced to writing as specified in subdivision 20.2.2 of this rule and promptly delivered by the staff to the facility administrator or the administrator's designee and the patient advocate.

20.2.5. Response of The Administrator. The administrator or his or her designee, after reviewing the grievance, shall respond to the complaining party by the next work day following receipt of the grievance, unless the grievance involves abuse or neglect, in which case the grievance shall be referred to a patient advocate for investigation within one hour of receipt by the administrator or his or her designee if the advocate was not involved in the preparation of the abuse or neglect grievance. In that case, the grievance shall be answered the next work day following receipt of the report of the patient advocate.

20.2.6. The response by the administrator or his or her designee shall be in writing on the grievance form and a copy of the response shall be delivered to the complainant and the patient advocate. The patient advocate is responsible for keeping an accurate record of all grievances, of actions taken, and their resolution.

20.2.7. The facility shall seek to resolve grievances as expeditiously as possible either by providing the relief requested or utilizing internal administrative mechanisms, treatment teams, etc. Living units operated by the facility shall have mechanisms in place to facilitate communication and resolution of problems such as environmental problems and interpersonal conflicts experienced by patients.

20.2.8. Action on Grievances. The administrator shall immediately initiate appropriate action to correct meritorious grievances.

20.2.9. Abuse/Neglect Investigation. All grievances of abuse or neglect, or both, shall be investigated by the facility patient advocate or an outside advocate as appropriate. Upon receipt of an abuse/neglect grievance, the advocate shall immediately interview the patient and review the situation. Within the next eight regular working hours, the advocate shall make a written report to the facility administrator. As part of the investigative process the advocate shall have access to all staff members, pertinent records and documents and shall interview witnesses and take statements as appropriate. The advocate shall not have access to employee personnel records; all investigations shall be based on evidence related to the grievance under investigation only.

20.2.10. Reporting Abuse or Neglect, or both. W. Va. Code §9-6-9, the West Virginia Adult Protective Services Act, requires that any and all behavioral health professionals shall immediately report all actual or suspected cases of abuse or neglect of incapacitated adults to the Department of Health and Human Resources local adult protective services office. If the report is made by telephone, the adult protective services requires a written report from the individual reporting the incident within 48 hours.

20.2.11. When a facility employee or the patient advocate becomes aware or is notified of a grievance of abuse or neglect, he or she shall immediately notify the advocate, the local adult protective services agency directly or by phone, his or her supervisor, and the administrator, and document the incident. Initiation of this procedure in no way abrogates the duty of the facility to respond to the grievance filed in the manner set forth in this rule.

20.2.12. Initiating an Appeal of a Grievance Determination. In the event that the complaining party is not satisfied with the determination by the administrator, the complaining party may appeal the determination by submitting a copy of the original grievance form and determination to the Office of the Court Monitor in accordance with an Agreed Amended Order entered on October 15, 2012, in the action *E.H., et al., v. Matin, et al.*, Civil Action No. 81-MISC-585 (Circuit Court of Kanawha County, West Virginia) or subsequent applicable order that may be entered by the court in such action.

20.2.13. No Waiver. Nothing in this rule is intended to serve as a precondition to or supplant any other remedial initiatives that a patient may wish to pursue relative to a claim. Nothing in this rule nor any action by the administrator interferes with or supplants a state employee's rights pursuant to W. Va. Code §6C-2-1 *et seq.*, or application of the grievance procedure for state employees, nor should it be considered to change or waive the employee grievance timelines for filing a grievance.

20.2.14. Confidentiality/Protection. Procedures and investigations conducted under this rule shall be conducted with due regard for the confidentiality, rights, and dignity of all parties. The facility may not discharge or in any manner discriminate against any patient, employee, or other party because of involvement in the grievance or appeal process.

20.2.15. Responsibilities of Parties. The responsibilities of the parties are set forth below:

20.2.15.a. Employees shall be aware of patient rights, know the facility's procedures for reporting and filing grievances, report infractions of patient rights, assist patients to access the facility advocate, to resolve grievances and assist in investigations of infractions of patient rights.

20.2.15.b. Patient advocates shall assist patients in registering and filing grievances, acknowledge grievances, conduct investigations of grievances, notify the administrator of results of grievance investigations, assure that abuse/neglect grievances have been reported to Adult Protective Services, educate staff regarding patient rights and maintain accurate documentation of all grievances and investigations.

20.2.15.c. The administrator and his or her designates shall file responses within established time frames, assure patient protection by appropriate staff disciplinary actions, to deal promptly and effectively with acts of discrimination or reprisal against staff or patients regarding patient rights and supporting staff development efforts toward educating all staff regarding patient rights.

20.2.15.d. Staff Development Officers shall assure that all staff are made aware of patient rights, facility procedures for reporting and resolving grievances, grievance procedures, personnel policies regarding reporting of violations of patient rights, staff grievance procedures and facility policies to protect staff from harassment and retaliation and threats for reporting rights violations.

§64-59-21. Severability.

The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.